

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MILTON MCDANIEL,

Plaintiff,

ORDER

v.

13-cv-797-wmc

JOSEPH BEAHM,

Defendant.

On May 26, 2015, plaintiff Milton McDaniel filed a motion to amend his complaint to add an Eighth Amendment claim of sexual assault against defendant Joseph Beahm. This proposed claim allegedly stems from the same interaction as the current excessive force claim McDaniel has asserted against Beahm, and defendants represent that they ordinarily would not object to McDaniel's request to add such a claim. (Def.'s Resp. (dkt. #33) 1.) However, defendants oppose the amendment on the grounds of futility, asserting that McDaniel failed to exhaust his administrative remedies with respect to this new proposed Eighth Amendment claim as evidenced by defendant's submission of McDaniel's offender complaint history. (*See* Decl. of Brian Greff (dkt. #34).)

From the materials submitted, it appears that defendant is correct. However, to ensure that amendment is truly futile, the court will give McDaniel 14 days to submit evidence and explain whether he properly exhausted his administrative remedies or, in the alternative, why those remedies were unavailable to him.

Entered this 28th day of July, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge